

CITY OF BENICIA

ORDINANCE NO. 09-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 1.40 (CAMPAIGN FINANCING OF CANDIDATE ELECTIONS) OF TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

Chapter 1.40 (Campaign Financing of Candidate Elections) of Title 1 (General Provisions) of the Benicia Municipal Code is amended to read as follows:

Chapter 1.40

**DISCLOSURE OF CONTRIBUTIONS AND EXPENDITURES
IN CANDIDATE AND BALLOT MEASURE ELECTIONS**

1.40.010 **Purpose.** This chapter is intended to supplement the Political Reform Act of 1974.

1.40.020 **Definitions.** The definitions set forth in the Political Reform Act of 1974 as amended (Government Code Sections 82000 through 82055) shall govern the interpretation of this chapter, unless otherwise specified herein.

1.40.030 **Additional campaign statements.**

A. In addition to the campaign statements required to be filed pursuant to the Political Reform Act, commencing with Government Code Section 8100, as amended, candidates for mayor and city council, their controlled committees and committees primarily formed to support or oppose these candidates shall file an additional pre-election statement by 4:30 p.m. on the Wednesday immediately preceding the election. This statement shall have a closing date of the prior Sunday and shall cover activity and payments occurring from the closing date of the last report filed by the candidate or committee through and including that Sunday.

B. In addition to the campaign statements required to be filed pursuant to the Political Reform Act, commencing with Government Code Section 8100, as amended, candidates for mayor and city council, their controlled committees and committees primarily formed to support or oppose these candidates shall file a post-election statement by 4:30 p.m. on the Friday immediately following the election. This statement shall include all activity and payments occurring from the closing date of the last report filed by the candidate or committee through and including Election Day.

1.40.040 Supplemental independent expenditure reports in candidate elections. Any person or committee making independent expenditures totaling \$1,000 or more in a calendar year, supporting or opposing a candidate for mayor or city council, regardless of where or when it files its campaign reports under the Political Reform Act, the Federal Election Campaign Act, or any similar law, shall file a California Supplemental Independent Expenditure Report (Form 465) with the city clerk at the same time as the mayoral and city council candidates, covering the same period and disclosing the information required by that statement.

1.40.041 Independent expenditures in 45 days preceding election.

A. Disclosure of Expenditures. Any person, including any committee, that makes or incurs independent expenditures of \$1,000 or more in support of or in opposition to any city measure or candidate for mayor or city council, in the 45 days before an election in which the measure or candidate appears on the ballot, shall notify the city clerk within 24 hours by personal delivery, fax or email each time one or more expenditures, which meet this threshold, are made.

B. Contents of Notice.

1. The notice shall specify:
 - a. Each candidate or measure supported or opposed by the expenditure;
 - b. The amount spent to support or oppose each candidate or measure;
 - c. Whether the candidate or measure was supported or opposed;
 - d. The date and amount of each expenditure;
 - e. A description of the type of communication for which the expenditure was made;
 - f. The name and address of the person making the expenditure; and
 - g. The name and address of the payee.
2. The notice shall include a statement that the expenditure was not made at the behest of any candidate or ballot measure proponent who benefited from the expenditure.
3. The notice shall be signed under penalty of perjury by both a responsible officer and the treasurer of the committee making the expenditure.

C. Notification to Candidates of Expenditures. The city clerk will notify all candidates by fax or e-mail in the affected race within one business day after receiving the notice of independent expenditures of \$1,000 or more. The notification will indicate the candidate who was supported or opposed by the expenditure and include a copy of the communication provided by the person or group making the expenditure.

D. Exemption for Regularly Published Newsletters. For purposes of the notification required by subsection A, payments by an organization for its regularly published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication, shall not be required to be reported.

1.40.042 Disclaimer requirements for campaign communications funded by independent expenditures.

A. Campaign communications funded by an independent expenditure supporting or opposing city candidates or city measures shall include the phrase "Not authorized by a candidate," and shall also include the name of any contributor of \$2,500 or more made in the past six months to a committee funding the independent expenditure, in the phrase "Major Funding Provided By [Name of Contributor(s)]." Expenditures of \$2,500 or more that are earmarked for any other candidate or ballot measure outside of the City of Benicia need not be disclosed.

B. The disclosures required by this section shall be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice, as specified below:

1. For printed campaign communications that measure no more than 24 inches by 36 inches, all disclosure statements required by this section shall be printed using a typeface that is easily legible to an average reader or viewer, but is not less than 10-point type in contrasting color to the background on which it appears. For printed campaign communications larger than this size in area, all disclosure statements shall constitute at least five percent of the height of the material and shall be printed in contrasting color.

2. For video broadcasts including television, satellite and cable campaign communications, the information shall be both written and spoken either at the beginning or at the end of the communication, except that if the disclosure statement is written for at least five seconds of a broadcast of thirty seconds or less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not required. The written disclosure statement shall be of sufficient size to be readily legible to an average viewer and air for not less than four seconds.

3. For audio, telephone call or radio advertisement campaign communications, the disclosures shall be spoken in a clearly audible manner at the same speed and volume as the rest of the telephone call or radio advertisement at the beginning or end of the communication and shall last at least three seconds.

C. For purposes of this section, "campaign communication" means any of the following items:

1. More than 200 substantially similar pieces of campaign literature distributed within a calendar month, including but not limited to mailers, flyers, faxes, pamphlets, door hangers, e-mails, campaign buttons 10 inches in diameter or larger, and bumper stickers 60 square inches or larger;

2. Posters, yard or street signs, billboards, supergraphic signs and similar items;

3. Television, cable, satellite and radio broadcasts;

4. Newspaper, magazine, internet website banners and similar advertisements;

5. 200 or more substantially similar live or recorded telephone calls made within a calendar month.

D. For purposes of this section, "campaign communication" does not include: small promotional items such as pens, pencils, clothing, mugs, potholders, skywriting or

other items on which the statement required by this section cannot be reasonably printed or displayed in an easily legible typeface; communications paid for by a newspaper, radio station, television station or other recognized news medium; and communications from an organization to its members other than a communication from a political party to its members.

E. The disclaimer on campaign communications must be updated when a new person qualifies as a disclosable contributor or when the committee's name changes. Broadcast advertisement disclosures must be amended within five calendar days after a new person qualifies as a disclosable contributor or a committee's name changes.

A committee shall be deemed to have complied with this section if the amended advertisement is mailed, containing a request that the advertisement immediately be replaced, to all affected broadcast stations by overnight mail no later than the fifth day. For printed campaign communications and other material, disclosure information must be amended to reflect accurate disclosure information every time an order to reproduce the communication is placed.

1.40.050 Access to records. All campaign reports required to be filed by any candidate or committee with the city clerk shall be scanned and stored in .pdf format. The reports shall be posted on the city's website no later than two working days after filing.

1.40.060 Ballot measure finance disclosure. Unless otherwise indicated, if a recall, referendum or initiative petition impacting city elected officials or city law is filed, the proponent shall be subject to the same provisions of this chapter as are applicable to candidates for elective city office, and any committee supporting or opposing the measure shall be subject to the same disclosure provisions as are applicable to committees making contributions or expenditures in connection with city candidate elections.

1.40.070 Contributor occupation and employer. No contribution shall be deposited into a campaign checking account of a candidate for mayor or city council unless the name, address, occupation and employer of the contributor are on file in the records of the recipient of the contribution.

1.40.080 Campaign literature – filing with city clerk. An independent expenditure committee, that makes an expenditure for 200 or more recorded telephone calls or any other forms of electronic or facsimile transmission of substantially similar content, or that makes an expenditure of \$1,000 or more for a radio or television advertisement, or that mails or otherwise distributes more than 200 substantially similar pieces of campaign literature in support of or opposition to any candidate for mayor or city council, shall give a copy of the literature or script used for each communication to the city clerk within 24 hours of the first time the mailings, calls, transmissions, or advertisements are made or aired.

1.40.090 Recordkeeping. Candidates for mayor and city council, and committee treasurers, shall maintain such detailed accounts, records, invoices and receipts as are necessary to prepare campaign statements and to comply with the Political Reform Act, the regulations of the Fair Political Practices Commission and this chapter.

1.40.100 Disclaimers on campaign communications. Any committee who mails or otherwise distributes more than 200 substantially similar pieces of campaign literature shall print, display or incorporate the following words anywhere within the communication: "Paid for by" immediately followed by the name, address and city of that committee. If the sender of a mass mailing is a controlled committee, the name of the person controlling the committee shall also be included. If an acronym is used to specify a committee name, the full name of any sponsoring organization of the committee shall be included in the campaign communication disclaimer required by this section.

1.40.110 Duties of city clerk and city attorney. The city clerk shall administer the provisions of this section. In addition to other duties required under this chapter, the clerk shall:

A. Report apparent violations of this section and applicable state law to the city attorney.

B. Conduct audits of reports and statements filed by candidates and committees supporting or opposing candidates for mayor and city council, as well as proponents and committees supporting or opposing city ballot measures. The city clerk may employ or contract with auditors when necessary to audit reports filed under this chapter.

C. The city attorney and city clerk may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items necessary to the audit and investigation of candidates and committees.

1.40.120 Enforcement.

A. Criminal Enforcement. Any person who knowingly or willfully violates any provisions of this section is guilty of a misdemeanor. Any person who causes any other person to violate any provision of this section, or who aids and abets any other person in the violation of any provision of this section, shall be liable under the provisions of this section. Prosecution for violation of any provision of this chapter must be commenced within two years after the date on which the violation occurred.

B. Civil Enforcement.

1. Any person who intentionally or negligently violates any provision of this section shall be liable in a civil action brought by the city attorney. Where no specific civil penalty is provided, a person may be liable for an amount up to two thousand dollars (\$2,000) for each violation.

2. Any person who intentionally or negligently makes or receives a contribution, or makes an expenditure, in violation of any provision of this section shall

be liable in a civil action brought by the city attorney for an amount up to three times the amount of the unlawful contribution or expenditure.

3. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

4. In determining the amount of liability under this subsection, the court may take into account any mitigating factors and any aggravating factors.

5. No civil action alleging a violation of this chapter shall commence more than two years after the date of the election for which the funds at issue were contributed or expended.

1.40.140 Verification. All notices, reports and statements filed under this chapter shall be signed and verified by the filer under penalty of perjury. The person signing shall read, know and understand the contents of all such documents.

1.40.150 Injunction. The city attorney on behalf of the people of the City of Benicia may sue for injunctive relief to enjoin violations or threatened violations or to compel compliance with the provisions of this chapter.

Section 2.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

On motion of Council Member **Campbell**, seconded by Council Member **Schwartzman**, the foregoing ordinance was introduced at a regular meeting of the City Council on the 17th day of March, 2009, and adopted at a regular meeting of the Council held on the 7th day of April, 2009 by the following vote:

Ayes: **Council Members Campbell, Hughes, Ioakimedes, Schwartzman and Mayor Patterson**

Noes: **None**

Absent: **None**

(d)(5)

Elizabeth Patterson, Mayor

ATTEST:

(d)(5)

Lisa Wolfe, City Clerk

CITY OF BENICIA

ORDINANCE NO. 09-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA ADDING A NEW CHAPTER 1.42 (CONTRIBUTION AND VOLUNTARY SPENDING LIMITS) OF TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

Title 1 (General Provisions) of the Benicia Municipal Code is amended by adding Chapter 1.42 (Contribution and Voluntary Spending Limits) to read as follows:

Chapter 1.42

CONTRIBUTION AND VOLUNTARY SPENDING LIMITS

- 1.42.010 Purpose.
- 1.42.020 Definitions.
- 1.42.030 Campaign contribution limitations.
- 1.42.040 Loans.
- 1.42.050 Use of personal funds.
- 1.42.060 Voluntary expenditure limits.
- 1.42.070 Lifting of voluntary expenditure limits.
- 1.42.080 Notification by non-participating candidate regarding expenditure ceiling.
- 1.42.090 Candidate acceptance or rejection of the voluntary expenditure limit.
- 1.42.100 Adjustment of limits for inflation.
- 1.42.110 Candidate debate.
- 1.42.120 Enforcement.

1.42.010 Purpose. This chapter is intended to supplement the Political Reform Act of 1974.

1.42.020 Definitions. The definitions set forth in the Political Reform Act of 1974 as amended (Government Code Sections 82000 through 82055) shall govern the interpretation of this chapter, unless otherwise specified herein.

"Debate" means a discussion between two or more candidates who have qualified to appear on a ballot for an elective city office that is moderated by an independent third party and that is attended by the public.

"Election" means any candidate election held for elective city office in the city of Benicia, including a general municipal election, a run-off election, a special election and a recall election.

"Elective city office" means the offices of mayor, city council member, city clerk and city treasurer.

"Elective city officer" means any individual who is a mayor, city council member, city clerk or city treasurer, whether appointed or elected.

"Qualified campaign expenditure" means:

(1) Any expenditure made by a candidate for city council or mayor, or by a committee controlled by such a candidate, for the purpose of influencing or attempting to influence the actions of the voters for or against the election of a candidate for city council or mayor.

(2) A non-monetary contribution provided at the behest of or with the approval of the candidate or committee controlled by the candidate.

1.42.030 Campaign contribution limitations. No person shall contribute a total of more than \$250 to any candidate for city council, mayor, city clerk or city treasurer and to his or her controlled committee for a single election. A candidate for city council, mayor, city clerk or city treasurer, and his or her controlled committee together shall not accept any contribution or contributions totaling more than \$250 from any person for a single election. Nothing in this section is intended to limit the amount a candidate may contribute to his or her campaign from his or her personal funds.

1.42.040 Loans. No person shall make, and no person or candidate shall solicit or accept any loan for a period of more than 30 days in connection with an election for city council or mayor. Loans to a candidate or to a candidate's controlled committees shall be counted against the contribution limitations applicable to the candidate. A candidate is not prohibited from obtaining a personal loan of any amount from a licensed financial lending institution in the regular course of business, unless the loan is made for political purposes. This section shall not limit the amount or duration of loans from the candidate to his or her own campaign.

1.42.050 Use of personal funds. No candidate shall expend more than \$5,000 in personal funds, whether contributed or loaned, in connection with his or her campaign for elected city office until the following conditions have been met.

A. All personal funds to be expended by the candidate shall first be deposited in the candidate's campaign contribution checking account at least 30 days before the election.

B. The candidate shall mail or personally deliver a letter noting the depositing of personal funds exceeding \$5,000 and the amount of the deposit by guaranteed overnight mail to the city clerk within 48 hours of the deposit date. The city clerk shall notify all other candidates running for that office of the deposit and amount within 24 hours. The hour limits exclude weekends and city holidays.

1.42.060 Voluntary expenditure limits.

A. Notwithstanding any other provision of this chapter, any candidate for city council or mayor who files a statement of acceptance of the voluntary expenditure limits specified in this section, shall be allowed to collect contributions or loans in twice the amounts specified in Sections 142.030.

B. The maximum qualified campaign expenditures for a candidate for mayor or city council shall be \$28,000.

1.42.070 Lifting of voluntary expenditure limits. If a candidate for mayor or city council declines to accept the voluntary expenditure limit and makes qualified campaign expenditures in excess of the expenditure limit, or if a committee makes independent expenditures in the aggregate of more than the same limit in support of or in opposition to any such candidate, the applicable expenditure ceiling shall no longer be binding on any candidate running for the same office.

1.42.080 Notification by non-participating candidate regarding expenditure ceiling. A candidate for mayor or city council who decides not to accept the voluntary expenditure limits shall notify the city clerk by telephone and by confirming telegram, fax or e-mail on the day the candidate raises more than 100% of the applicable expenditure ceiling and again on the day the candidate spends more than 100% of the applicable expenditure limit. The city clerk shall notify all other candidates for the same office by telephone, fax or e-mail within one business day.

1.42.090 Candidate acceptance or rejection of the voluntary expenditure limit. At the time of filing his or her declaration of intention, each candidate for city council or mayor shall also file a letter with the city clerk indicating acceptance or rejection of the applicable voluntary expenditure limit.

1.42.100 Adjustment of limits for inflation. Beginning January 1, 2011, the contribution and voluntary expenditure limits established by this chapter shall be adjusted biennially by a percentage equal to the change in the San Francisco Bay Area All Urban Consumer Price Index (CPI) for the previous two years. The amounts shall be rounded to the nearest ten dollars. The city clerk shall calculate such increase and post the new limits in a conspicuous place in the city clerk's office.

1.42.110 Candidate debate.
The open government commission shall sponsor a debate on the Saturday before the general election for all candidates for city council or mayor who meet the criteria of this section. The chair of the commission shall moderate the debate or shall select another member of the commission to serve as moderator. The questions shall be selected from among questions submitted by residents of, or nonprofit organizations located in, the city of Benicia.

1.42.120 Enforcement.
A. Criminal enforcement. Any person who knowingly or willfully violates any provisions of this chapter is guilty of a misdemeanor. Any person who causes any other person to violate any provision of this chapter, or who aids and abets any other person in the violation of any provision of this chapter, shall be liable under the provisions of this section. Prosecution for violation of any provision of this chapter must be commenced within two years after the date on which the violation occurred.

B. Civil enforcement.

1. Any person who intentionally or negligently violates any provision of this chapter shall be liable in a civil action brought by the city attorney. Where no specific civil penalty is provided, a person may be liable for an amount up to \$2,000 for each violation.

2. Any person who intentionally or negligently makes or receives a contribution, or makes an expenditure, in violation of any provision of this chapter shall be liable in a civil action brought by the city attorney for an amount up to three times the amount of the unlawful contribution or expenditure.

3. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

4. In determining the amount of liability under this subsection, the court may take into account any mitigating factors and any aggravating factors.

5. No civil action alleging a violation of this chapter shall commence more than two years after the date of the election for which the funds at issue were contributed or expended.

Section 2.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

On motion of Council Member **Campbell**, seconded by Council Member **Schwartzman**, the foregoing ordinance was introduced at a regular meeting of the City Council on the 2nd day of June, 2009, and adopted at a regular meeting of the Council held on the 16th day of June, 2009 by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman and Mayor Patterson

Noes: None

Absent: None

(d)(5)

Elizabeth Patterson, Mayor

ATTEST.

(d)(5)

Lisa Wolfe, City Clerk